

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3

4 Rodney Marshall,

5 Petitioner

6 v.

7 Brian Williams, et al.,

8 Respondents  
9

2:18-cv-00075-JAD-CWH

**Order Appointing Counsel and Setting  
Briefing Schedule**

10 I previously granted then-pro se petitioner Rodney Marshall's motion for appointment of  
11 counsel and appointed the Federal Public Defender's Office to represent him in his request for  
12 habeas corpus relief.<sup>1</sup> C.B. Kirschner of the Federal Public Defender's Office has now appeared  
13 on Marshall's behalf.<sup>2</sup> Accordingly, IT IS HEREBY ORDERED that Federal Public Defender,  
14 through C.B. Kirschner, is appointed as counsel for Marshall under 18 U.S.C. § 3006A(a)(2)(B).  
15 Counsel will represent Marshall in all federal proceedings related to this matter, including any  
16 appeals or certiorari proceedings, unless allowed to withdraw.

17 IT IS FURTHER ORDERED that **Marshall has until June 22, 2018, to file an**  
18 **amended petition or seek other appropriate relief.** Neither this deadline nor any extensions of  
19 it may constitute an implied finding that the federal limitation period has not expired or is tolled.<sup>3</sup>  
20 Marshall at all times remains responsible for calculating the federal limitation period and timely  
21 asserting claims regardless of any court-ordered deadlines or extensions.

22 IT IS FURTHER ORDERED that **respondents will have 60 days from the date of**  
23 **service of an amended petition to answer it or move to dismiss it.** And Marshall will then  
24 have **30 days from the date of service of an answer to reply to it.** The briefing schedule for  
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26 <sup>1</sup> ECF No. 4.

27 <sup>2</sup> ECF No. 7.

28 <sup>3</sup> See *Sossa v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

1 motions filed by either party, including a motion filed in lieu of a pleading, is governed by Local  
2 Rule LR 7-2(b).

3 IT IS FURTHER ORDERED that any procedural defenses raised by respondents must be  
4 raised together in a single, consolidated motion to dismiss. Successive motions to dismiss will  
5 not be entertained, and procedural defenses embedded in the answer may be ignored. Procedural  
6 defenses omitted from a single, consolidated motion to dismiss will be deemed waived.  
7 Respondents may not file a response that consolidates their procedural defenses, if any, with their  
8 response on the merits, except as allowed by 28 U.S.C. § 2254(b)(2) with respect to any  
9 unexhausted claims clearly lacking merit. If respondents do seek dismissal of unexhausted  
10 claims under § 2254(b)(2): (a) they must do so within the single motion to dismiss and not in the  
11 answer; and (b) they must specifically direct their argument to the standard for dismissal under §  
12 2254(b)(2) as outlined in *Cassett v. Stewart*, 406 F.3d 614, 623–24 (9th Cir. 2005).

13 IT IS FURTHER ORDERED that, in any answer filed on the merits, respondents must  
14 specifically cite to and address the applicable state-court written decision and state-court record  
15 materials, if any, regarding each claim within the response as to that claim.

16 IT IS FURTHER ORDERED that any state-court record exhibits filed by the parties must  
17 be filed with an index identifying the exhibits by number. The CM/ECF attachments that are  
18 filed must further be identified by the number of the exhibit in the attachment. If more exhibits  
19 are filed than can fit in a single ECF number, the first document within each successive ECF  
20 number must be a cover so that all exhibits are labeled as attachments. For example, if there are  
21 more exhibits than can be filed as attachments to ECF No. 5, ECF No. 6 must be a cover page,  
22 and the remaining exhibits would be ECF Nos. 6-1, 6-2, 6-3, etc.

23 IT IS FURTHER ORDERED that **the parties must send hard copies of any exhibits**  
24 **filed in this case to the RENO Clerk's Office.**

25 DATED: February 22, 2018.

26   
27 U.S. District Judge Jennifer A. Dorsey  
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